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Information on the activities of international intergovernmental and non-governmental organizations relating to space law

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Note by the Secretariat

I. Introduction

The present document was prepared by the secretariat on the basis of information received from the International Law Association.

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II. Replies received from international intergovernmental and non-governmental organizations

International Law Association[1]

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A. Background information

The International Law Association (ILA) was founded in 1873 and has been involved ever since in the study and development of international law in accordance with its statutes and in pursuance of its objectives. The ILA headquarters are in London, and Lord Mance, Justice of the Supreme Court of the United Kingdom of Great Britain and Northern Ireland, is the Executive Chair of the institution. The Director of Studies is Professor Marcel Brus of the Netherlands, and the Space Law Committee officers are Professor Stephan Hobe (German branch) as general rapporteur and Professor Maureen Williams (ILA headquarters) as Committee Chair. ILA is honoured to be, since 1990, a permanent observer to the Committee on the Peaceful Uses of Outer Space.

One of the striking features of ILA is the effort to keep pace with technological developments in the light of their strong influence in shaping international law. In fact, shortly after Sputnik I was launched into outer space, the ILA Council set up the Space Law Committee, at its forty-eighth Conference, in New York in 1958. The Space Law Committee has worked and met over the years without interruption, contributing to the development of space law through a number of draft conventions, guidelines and other proposals and debates addressing the ever-evolving aspects of these disciplines. The work of the Committee is recorded in the ILA reports, both in book format and online.

The forthcoming seventy-sixth Biennial Conference of ILA, organized jointly with the American Society of International Law, will be held in Washington, D.C. on 7-12 April 2014. On that occasion, 22 international committees will be reporting on different aspects of contemporary international law, some of which are closely related to space law (more details are available from www.ila2014.org and www.asil.org/annualmeeting).

The ILA general practice, as stated in previous reports to the Legal Subcommittee, is to work in cooperation with other institutions involved in the field of space activities.

On the intergovernmental level, those institutions include the International Law Commission, the Permanent Court of Arbitration (PCA) and, of course, the Committee on the Peaceful Uses of Outer Space and both its Subcommittees. Furthermore, the ILA Space Law Committee liaises with national space agencies, universities and research centres in different parts of the world. On the non-governmental level, ILA takes part, among other things, in the activities of the

[1] Report by the Chair of the Space Law Committee of the International Law Association.

International Institute of Space Law, the European Centre for Space Law and the Ibero-American Institute of Aeronautic and Space Law and Commercial Aviation, based in Madrid, which brings together a considerable number of Spanish-speaking space law specialists, particularly from Latin America.

B. Activities of the ILA Space Law Committee in 2013 in preparation for the seventy-sixth ILA Biennial Conference (Washington, D.C., 7-12 April 2014)

The closest precedent for the forthcoming Washington Conference is the seventy-fifth ILA Conference, held in Sofia in 2012, at which the Space Law Committee reported on the activities carried out between the holding of the Berlin Conference (2004) and the Sofia Conference (2012). The full reports and working sessions of the biennial conferences (including those of Toronto, Canada, in 2006, Rio de Janeiro, Brazil, in 2008 and The Hague, the Netherlands, in 2010) may be found on the ILA website (www.ila-hq.org, selecting the "committees" tab, then the link labelled "space law"). The results of the Sofia Conference are summarized as follows.

The fifth report of the Space Law Committee to the Sofia Conference (2012) discussed the value of satellite data in court, national space legislation, space debris, dispute settlement and registration issues. These were the central areas on which the Committee reported, covering the period 2004-2012. The Sofia Conference adopted the Committee's report without dissent, which included the above-mentioned topics (part I of the report), and the Sofia Guidelines for a Model Law for National Space Legislation (part II).

Details of these activities were provided by ILA at the fifty-second session of the Legal Subcommittee, in 2013, in the respective United Nations documents circulated at that session (A/AC.105/C.2/103 and A/AC.105/C.2/2013/CRP.6).

The new ILA mandate recognized[2] that the Space Law Committee had an established relationship with the United Nations institutions on space law, including its permanent observer status with the Committee on the Peaceful Uses of Outer Space. Therefore, in addition to its ongoing work with these bodies, during the next mandate period the Space Law Committee will work on (a) dispute settlement and the 2011 Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Outer Space Activities (hereinafter referred to as the "2011 PCA Outer Space Rules"); (b) suborbital flights and their legal implications; (c) the use of satellite data in international litigation; and (d) the legal aspects of space debris. It was further added that the Committee keep a general watching brief over further developments in space law that may occur during the new four-year mandate (2012-2016).

On this basis, the ILA Space Law Committee proceeded, during 2013, with its new commitments.

[2] ILA Executive Council decision, adopted in London on 9 November 2012.

C. Topics to be addressed by the ILA Space Law Committee at the forthcoming Washington Conference

As a first step, a document was circulated by the Chair to the Committee members requesting their initial views on the following topics.

Dispute settlement

The issue of dispute settlement consists of follow-up to the adoption of the 2011 PCA Outer Space Rules. As described in the Committee's report to the Sofia Conference, some ILA Committee members were involved in the drafting of those Rules, which became effective on 6 December 2011. The current ILA mandate includes exploring the application and effectiveness of the Rules and making recommendations accordingly. To this end, ILA is considering the preparation of a questionnaire to circulate, for instance, to stakeholders in satellite communications and other space industries, in order to create awareness of the Rules which, unlike the pre-existing dispute settlement mechanisms underlying the United Nations treaties on outer space, include private parties as well. The proposed questionnaire would assist in determining the level of familiarity with the Rules, the level of confidence in using them and any reasons that might deter their use, and the outcome of the questionnaire could reflect some incipient practice by States.

The prevailing idea is that the flexibility of the Rules and the ample space left to the autonomy of the parties are their most attractive features, in addition to being open to private parties. In so doing, the Rules are covering an important gap left by the United Nations treaties on outer space in the field of dispute settlement. This constitutes a step forward as commercial space activities are growing exponentially.

The ILA Space Law Committee has been introducing and explaining the Rules in the various sectors, at the international, regional and domestic levels, in order to create awareness, and has had positive reactions.

Suborbital flights

The ILA terms of reference include a new and separate topic on its agenda: suborbital flights and their legal implications. The topic will be formally introduced in one of the sections of the Committee's report to the Washington Conference. The report will be posted on the ILA website a few weeks prior to the event.

In the Committee's preliminary discussions on this subject, a series of different options were put forward. Some members were in favour of drafting a set of guidelines, whereas others, with a more cautious attitude, made the observation that there was an absence of a legal definition for this new modality, noting that any action at this stage would be premature. It was widely perceived that this new topic would bring back to the limelight issues related to the definition and delimitation of outer space. Some proposals indicated the need for an in-depth analysis of this matter in the aftermath of the Washington Conference, taking as a basis the exchange of opinions at the working session of the Committee. The majority also expressed the view that realistic answers to the questions contained in the report of the Chair of the Working Group on the Definition and Delimitation of Outer Space at the fifty-second session of the Legal Subcommittee (A/AC.105/1045, annex II, para. 8) would help to elucidate a few aspects of this new topic.

Therefore, conflicting attitudes are already perceived within the Committee, and there are hardly any precedents on this topic. It was observed that, so far, there has not been a successful, commercial suborbital flight in any country. Attention was drawn to the direct connection between suborbital flights, liability and insurance. Another point of contention raised by a Committee member referred to registration issues. From the reading of the Convention on Registration of Objects Launched into Outer Space, it may be easily concluded that suborbital vehicles do not come under its provisions, which are limited to space objects "launched into Earth orbit or beyond".

Further analysis is expected as a result of the Washington working session.

Use of satellite data in international litigation and related aspects

The state of the art in regard to this topic was examined and discussed in the Committee's report to the Sofia Conference, and a number of recommendations were adopted. It was agreed that this issue be kept under review by the Committee on the basis of recent case law and the development of practices for the production of satellite data in court, with special reference to international boundary disputes. The general view holds that the long chain of interpretations from the moment the data are collected by the satellite (raw data) to the time they are processed, put in the market and submitted to court as an end product should be strictly controlled. Furthermore, raw data should be kept in archives and sealed to allow the parties to compare the sealed information (raw data) with the data being submitted as evidence in court.

In this framework, the Committee is examining the use of satellite data for verification purposes to control treaty behaviour in different areas such as arms control, natural disasters, water management and others seen by the Committee as important applications of space technologies.

In this context, privacy has remained an outstanding issue since ILA first addressed the application of remote sensing technologies in 1976 at the Madrid Conference, and it is expected to continue to be a central issue on the agenda of the Committee, taking different shapes as technology develops. Far-reaching technologies, such as Google Earth, are a good illustration of it, and the challenge is to strike the right balance between freedom of information and the protection of privacy.

All are aware that today's international context differs sharply from the days when "The Sunday Times case" was decided by the European Court of Human Rights in Strasbourg, France, at the end of the 1970s, and when the principle of freedom of information was interpreted and applied in almost absolute terms. The Times of London has reflected the new situation clearly in some of its leading articles, pointing out that in recent court decisions in the United Kingdom, freedom of the press is sometimes overridden by the need to protect privacy (editorial column of The Times, 21 April 2011). Therefore, it seems valid to ask whether this attitude is responding to the need for further protection of privacy in the world of today, where space technologies and their implications are growing on an unprecedented scale.

The ILA Committee considers that what constitutes privacy in a citizen-to-citizen relationship may be different than in a citizen-to-government relationship or,

moreover, in a government-to-government relationship. The cultural aspects underlying the value of privacy have also been explored during the Committee's debates, and, according to some observations, this aspect will probably have an important influence on relevant laws and regulations. Recent events and situations are showing the way, such as the Snowden case. This is one of the points to be explored by the Committee during its current mandate.

Space debris

ILA has longstanding experience in the field of space debris, which goes back to 1994, when the Buenos Aires International Instrument on the Protection of the Environment from Damage Caused by Space Debris[3] was adopted at its sixty-sixth Conference. This topic is expected to continue to be a central item on the agenda for some time.

The Committee's objective is to open a new chapter in the treatment of space debris, as well as collisions generating debris, in current international settings. Attention is being focused especially on practice by States and their compliance with the Space Debris Mitigation Guidelines of the Committee on the Peaceful Uses of Outer Space (2007), a topic currently on the agenda of the Legal Subcommittee. The Guidelines were drafted by the Scientific and Technical Subcommittee with no participation of the Legal Subcommittee, which has led to reactions in the sense that, after review by the Legal Subcommittee, they should be upgraded to become a set of United Nations principles such as those on remote sensing, direct broadcast and use of nuclear power sources in space. This position, submitted to the Legal Subcommittee by the delegation of the Czech Republic to the Committee on the Peaceful Uses of Outer Space (A/AC.105/C.2/L.283) in recent times, will continue under review as follow-up to the recommendation made in the Sofia Conference report (Report of the Seventy-fifth Conference of the International Law Association (2012), subchapter on space debris, pp. 299-303).

D. Perceptions, suggestions and onward work of the ILA Space Law Committee

The last paragraph of the current mandate of the Space Law Committee indicates, without any specific mention, that the Committee should keep a "general watching brief" over further developments in space law that may occur during the period 2012-2016. A few proposals have already been advanced by Committee members, intended, in general, for implementation after the conclusion of the mandate under way.

[3] This instrument was adopted at the sixty-sixth Conference of ILA in Buenos Aires. See James Crawford and Maureen Williams, eds., Report of the Sixty-sixth Conference of the International Law Association (London, 1994), pp. 305-325. One of the precedents for the elaboration of this instrument was the work by the National Scientific and Technical Research Council (CONICET) and the University of Buenos Aires in the early 1990s, reflected in Maureen Williams, El Riesgo Ambiental y su Regulación (Abeledo Perrot, Buenos Aires, 1998). The instrument was commented upon in a working paper by the Czech delegation submitted to the Legal Subcommittee at its fiftieth session, contained in document A/AC.105/C.2/L.283.

What follows is, in no order of priority, a list of suggested items received by the Committee Chair at this stage:

(a) Space communications in the light of recent developments in international and regional telecommunications law. This area, at the moment, reflects a myriad of unresolved legal issues calling for prompt attention;

(b) Legal issues relating to small satellites. The importance of this area is growing by the day and appearing as an attractive choice, particularly for developing countries;

(c) Legal implications of missions to Mars and the potential exploitation of resources on the Moon and asteroids. This implies that the environmental aspects of the Moon Agreement[4] should be revised in a new light, bearing in mind that its provisions also apply to "other celestial bodies" and that the legal aspects of space mining companies working in asteroid missions should be considered as well.

Be that as it may, this would not imply automatically adding to the current terms of reference, as central topics, any new matters worthy of consideration that may come up during our current mandate. Indeed the mandate, as it stands for the period 2012-2016, is broad enough. The idea, rather, is to keep an eye on emerging matters and follow the state of the art. A concise introductory report may be drafted at a later stage, to be added to the submission for the 2016 Conference, at which future work topics of the Space Law Committee will be defined.

Suggestions from the Committee on the Peaceful Uses of Outer Space on these and any other questions will be most welcome.

The Space Law Committee's next stage, as announced, is the working session to be held on 8 April 2014 in the framework of the seventy-sixth ILA Conference in Washington, D.C. (7-12 April 2014). The Washington Conference is being organized jointly by ILA and the American Society of International Law, which will be holding its 108th annual meeting in that context.

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[4] Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (United Nations, Treaty Series, vol. 1363, No. 23002).